

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

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COURT OF APPEALS
DIVISION TWO

IN RE MIRALEM S.

) 2 CA-JV 2007-0064

) DEPARTMENT A

) MEMORANDUM DECISION

) Not for Publication

) Rule 28, Rules of Civil

) Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 16684501

Honorable Charles S. Sabalos, Judge

AFFIRMED

Barbara LaWall, Pima County Attorney
By Kara Crosby

Tucson
Attorneys for State

Barton & Storts, P.C.
By Ian Tomlinson

Tucson
Attorneys for Minor

H O W A R D, Presiding Judge.

¶1 Miralem S. admitted charges of threatening or intimidating and criminal damage, two of the three counts alleged in what appears to have been the seventh delinquency petition filed against him since December 2003. The juvenile court adjudicated him delinquent, revoked probation he had been serving in connection with another petition,

and ordered him committed to the Arizona Department of Juvenile Corrections (ADJC) for one year. On appeal, Miralem challenges the disposition, contending the court abused its discretion by committing him to ADJC rather than ordering a less restrictive placement and by committing him to ADJC for one year.

¶2 It is for a juvenile court to determine, in the exercise of its broad discretion, the appropriate disposition of a juvenile who has been adjudicated delinquent. *In re Themika M.*, 206 Ariz. 553, ¶ 5, 81 P.3d 344, 345 (App. 2003). Absent a clear abuse of that discretion, we will not disturb a juvenile court's disposition order. *In re Kristen C.*, 193 Ariz. 562, ¶ 7, 975 P.2d 152, 153 (App. 1999).

¶3 Miralem's lengthy history of criminal conduct is well documented in the record before us. He was already on probation in one matter in December 2006 when he absconded. He was subsequently rearrested and continued on juvenile intensive probation supervision (JIPS), but he absconded again. This time, after he was arrested and adjudicated again on a new offense, the juvenile court continued him on JIPS but ordered him placed in the custody of Canyon State Academy (CSA). On May 9, 2007, before Miralem was released to CSA, the state filed the delinquency petition that gives rise to this appeal. After Miralem admitted two of the counts, both misdemeanors, the juvenile court rejected his request to be continued on probation and sent to CSA. The court reviewed Miralem's extensive history of criminal and defiant behavior and found that he had "committed a series of delinquent acts . . . [and] that the protection of the community require[d his] placement

in a secure facility.” The court added that commitment was necessary in order “to ensure accountability of the Minor; . . . there [wa]s no appropriate, less restrictive alternative that exist[ed], and the commitment [wa]s the final opportunity for rehabilitation.”

¶4 Miralem concedes that the supreme court’s guidelines for commitment to ADJC, Ariz. Code of Jud. Admin. § 6-304(C)(1), do not require the juvenile court to choose a “less restrictive alternative to the Department of Corrections.” The guidelines only require the court to “[g]ive special consideration to the nature of the offense, the level of risk the juvenile poses to the community, and whether appropriate less restrictive alternatives to commitment exist within the community.” § 6-304(C)(1)(c). Miralem asserts the juvenile court simply “did not give Canyon State Academy a chance, and instead, used the Department of Corrections to punish [him] rather than to rehabilitate him.”

¶5 The record establishes the juvenile court soundly exercised its discretion. It considered all relevant matters, including Miralem’s history of criminal behavior, repeatedly running away, and engaging in violent behavior. Well aware of Miralem’s background and history, the court viewed him as a threat to the community, and reasonable evidence in the record supports that conclusion. At the disposition hearing, the state argued that, because CSA is not a locked, secure facility, it was not an appropriate placement for Miralem based on his prior offenses, including weapons offenses, and the fact that “[h]is behavior in Detention while he was pending placement ha[d] been outrageous.” Reading from a report, the court noted that, while in detention, Miralem reportedly had flooded his room with

water from the toilet and banged his head on his cell door, stating he wanted to kill himself. Nothing in the record establishes the court abused its discretion by finding commitment to ADJC was appropriate, particularly after Miralem's repeated failures on probation.

¶6 Nor did the juvenile court abuse its discretion by ordering Miralem committed to ADJC for one year. As the state correctly points out, for the same reason the court's rejection of CSA was a sound decision, so, too, was the period of commitment it imposed. The commitment guidelines are merely guidelines and, ultimately, it was for the juvenile court to determine the appropriate period in the exercise of its discretion. *See In re Niky R.*, 203 Ariz. 387, ¶ 12, 55 P.3d 81, 84 (App. 2002). The state had recommended "at least a minimum of six months" at ADJC. The court's comments suggested it believed that Miralem's past conduct demonstrated his need for a longer period of time to rehabilitate. The record simply does not support Miralem's contention that the court's intent was to punish, rather than rehabilitate, him.

¶7 We affirm the juvenile court's orders adjudicating Miralem delinquent and committing him to ADJC.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

J. WILLIAM BRAMMER, JR., Judge